

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 299

July 11, 1995, 5:32 p.m.
Page S-9693 Temp. Record

REGULATORY REFORM/Temporary Cost-Benefit Waiver for Food Safety

SUBJECT: Comprehensive Regulatory Reform Act of 1995 . . . S. 343. Dole substitute amendment No. 1493 to the Dole amendment No. 1492 to the Dole/Johnston substitute amendment No. 1487.

ACTION: AMENDMENT AGREED TO, 99-0

SYNOPSIS: As reported, S. 343 will make changes to reform the regulatory process. The Dole/Johnston substitute amendment would modify the bill in accordance with suggestions made by Senate Democrats, the Administration, and the American Bar Association. The amendment would: recodify and modify the Administrative Procedures Act (APA); impose judicially reviewable obligations on Federal agencies to craft rules in which the benefits justify the costs and to use peer reviewed, standardized risk assessments; expand the Regulatory Flexibility Act; reform the Delaney Clause; and strengthen congressional oversight.

The Dole amendment would expound on the waiver authority in the Dole/Johnston substitute amendment in order to alleviate concerns that were expressed as to the scope of that authority. The Dole/Johnston substitute amendment would permit the adoption and imposition of a major rule without first conducting a cost-benefit analysis if the promulgating agency for good cause found that conducting such an analysis would be impractical due to a health or safety threat or to an emergency. The Dole amendment would clarify that a food safety threat (including an imminent threat from E. coli bacteria) that was likely to result in significant harm to the public or natural resources would be covered by that waiver authority. Waiver authority under the Dole/Johnston substitute amendment would last for 180 days, during which time a cost-benefit analysis would have to be performed on the regulation.

The Dole substitute amendment would add the same language as the underlying amendment, except that the effective date would be 1 day after the date of enactment.

NOTE: Following the vote, the underlying Dole amendment, as amended, was adopted by voice vote.

Those favoring the amendment contended:

We have been forced to offer this totally unnecessary amendment due to the strident scare-tactics that have been engaged in by

(See other side)

YEAS (99)				NAYS (0)		NOT VOTING (1)	
Republican (53 or 100%)		Democrats (46 or 100%)		Republicans (0 or 0%)	Democrats (0 or 0%)	Republicans (1)	Democrats (0)
Abraham	Hutchison	Akaka	Inouye			Bond- ²	
Ashcroft	Inhofe	Baucus	Johnston				
Bennett	Jeffords	Biden	Kennedy				
Brown	Kassebaum	Bingaman	Kerrey				
Burns	Kempthorne	Boxer	Kerry				
Campbell	Kyl	Bradley	Kohl				
Chafee	Lott	Breaux	Lautenberg				
Coats	Lugar	Bryan	Leahy				
Cochran	Mack	Bumpers	Levin				
Cohen	McCain	Byrd	Lieberman				
Coverdell	McConnell	Conrad	Mikulski				
Craig	Murkowski	Daschle	Moseley-Braun				
D'Amato	Nickles	Dodd	Moynihan				
DeWine	Packwood	Dorgan	Murray				
Dole	Pressler	Exon	Nunn				
Domenici	Roth	Feingold	Pell				
Faircloth	Santorum	Feinstein	Pryor				
Frist	Shelby	Ford	Reid				
Gorton	Simpson	Glenn	Robb				
Gramm	Smith	Graham	Rockefeller				
Grams	Snowe	Harkin	Sarbanes				
Grassley	Specter	Heflin	Simon				
Gregg	Stevens	Hollings	Wellstone				
Hatch	Thomas						
Hatfield	Thompson						
Helms	Thurmond						
	Warner						
						EXPLANATION OF ABSENCE:	
						1—Official Business	
						2—Necessarily Absent	
						3—Illness	
						4—Other	
						SYMBOLS:	
						AY—Announced Yea	
						AN—Announced Nay	
						PY—Paired Yea	
						PN—Paired Nay	

certain Senators, special interest groups, and members of the media over the past several days. The hysterical charge has been that this bill will delay the implementation of regulations on meat contaminated with *E. coli* bacteria. Such contaminated meat has caused hundreds of deaths recently. Supposedly, these regulations will be delayed until a cost-benefit analysis is done of them.

This charge is blatantly false; no delay will occur. First, a cost-benefit analysis has already been done by the Agriculture Department, and the cost has been found to be justified. Second, even if the analysis had not been done, the rule would go forward because the bill clearly allows the implementation of rules prior to conducting a cost-benefit analysis if necessary to meet a health or safety threat. Does any Senator wish to suggest that meat contaminated with a deadly bacteria is not a health or safety threat? Third, meat safety rules are not even predominately enforced through rules but through adjudicatory enforcement and inspection orders.

Some Senators have demurred that all of the above may be true, but Republicans in the Governmental Affairs Committee rejected an amendment on *E. coli* bacteria regulations when considering the regulatory moratorium bill earlier this session. However, that bill also contained a provision that would have allowed the President to waive the moratorium for any rule necessary to protect the public health and safety. If Republicans had accepted the amendment, the only practical effect it would have had would have been to give the impression that without it the bill would have sanctioned the sale of contaminated meat. The same is true for the amendments Democrats offered to that bill on *E. coli*, cryptosporidium, and similar health hazards. If our colleagues oppose this bill, the regulatory moratorium bill, or any other bill, we suggest that they state their reasons and then debate the bill on its merits, instead of manufacturing charges like it will allow the sale of contaminated meat.

The media and the special interest groups have picked up the battle cry on this issue. Millions of Americans have been told that this bill is designed to make them eat contaminated meat that will kill them. One broadcast we watched started with the solemn assurance that 5,000 people will die this year, and ended with the statement that 500 would die. On another broadcast, we heard that cost-benefit analysis was used by Nazis to determine the value of prisoners in concentration camps. The statements that are being bandied about are extreme, and there appears to be zero concern for the truth.

The Dole amendment should stop at least the current false statements on this bill. It would make clear, for anyone who does not understand the exemptions in the substitute amendment, that regulations on food safety threats could go forward before the completion of cost-benefit analyses. Further, for anyone who may be confused over whether meat contaminated with deadly bacteria qualifies as a food safety threat, the Dole amendment would specifically note that, indeed, *E. coli* bacteria contamination is a food safety threat. The Dole amendment is not needed to provide protection, but it is needed to put this phony issue behind us. We will vote for it on that basis.

While favoring the amendment, some Senators expressed the following reservations:

We do not think this issue is fictitious. After sitting through hearings at which parents testified on the horrible deaths their children suffered after eating meat contaminated with *E. coli*, we assure our colleagues that we are sincere in our efforts to be absolutely sure that this bill will not delay the implementation of regulations on that deadly bacteria. Republican Senators have strenuously resisted specific exemptions for such regulations, insisting that a general exemption will suffice. In the committee consideration on the regulatory moratorium bill, for instance, they rejected an amendment to exempt regulations on *E. coli*. That bill did not have an exemption for health and safety. Additionally, though we accept that some meat packers asked for the development of these regulations, and though we know that Senate Republicans support them, we also are aware that some meat packers and some House Members are not supportive. Therefore, we think it is legitimate to ask for an explicit assurance. The Dole amendment would give us that explicit assurance, so we are pleased to vote in its favor. However, even though we will vote for this amendment, the issue will not stop at this point. Passing the Dole amendment will only create a 180-day grace period. Further action will be needed to make certain that the regulations on *E. coli* survive further scrutiny.